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6 Attorneys for Plaintiff  
BAY AREA PAINTERS AND TAPERS  
7 PENSION FUND, et al.

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9  
10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 BAY AREA PAINTERS AND TAPERS  
13 PENSION FUND, et al.,

14 Plaintiffs,

15 v.

16 RANDY THOMPSON PAINTING, INC., and  
17 RANDY RAY THOMPSON,

18 Defendants.

Case No.: C07-4703 WHA

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: January 24, 2008

Time: 2:30 P.M..

Courtroom: 9, 19<sup>th</sup> Floor

Judge: The Honorable William H. Alsup

19  
20 The parties to the above-entitled action jointly submit this Case Management Statement:

21 1. **Jurisdiction and Service:** There are no known issues regarding Jurisdiction,  
22 venue, nor any additional parties to be named or served.

23 2. **Facts:** Defendant, Randy Thompson Painting Inc. is signatory to a Collective  
24 Bargaining Agreement requiring that certain contributions be made for each hour worked by its  
25 employees or other entities performing bargaining unit work. Plaintiffs performed a routine audit  
26 of defendant's records and found certain discrepancies of reported contributions, and found that  
27 defendant had not reported or paid contributions on another individual who was paid for  
28

1 bargaining unit work. Defendants contend that contributions are not due for that individual under  
2 the Collective Bargaining Agreement and by agreement with the Union. Plaintiffs contend that  
3 neither the Union nor the Trust Funds were parties to any such agreement, and that contributions  
4 are due for work performed under the terms of the Bargaining Agreement. The audit was  
5 performed to confirm proper reporting and / or payment to the Trust Funds for the period from  
6 2004–2005. Plaintiffs contend that defendants are employers under the terms of ERISA, and  
7 therefore jointly liable for plaintiffs' claims, including liquidated damages, interest, auditor's and  
8 attorneys' fees and costs, pursuant to the terms of the Bargaining Agreement and Trust  
9 Agreements.  
10

11 3. **Legal Issues:** It did not appear that there were disputed points of law. Defendants  
12 today raised a "joint venture" issue which have been addressed, explored or documented.  
13

14 4. **Motions:** Plaintiffs anticipate filing a Motion for Summary Judgment in the event  
15 that this matter does not resolve informally or by mediation. The parties have recently entered  
16 settlement discussions, and are attempting to come to terms.

17 5. **Amendment of Pleadings:** No amendments are anticipated.

18 6. **Evidence Preservation:** Not applicable.

19 7. **Disclosures:** The parties have made their initial Rule 26 disclosures. Additionally,  
20 plaintiffs provided a revised copy of the audit report and the total amount found due. The majority  
21 of the other documents that support plaintiffs' claims are already in defendant's possession---the  
22 Collective Bargaining Agreement, Contribution Reports submitted by defendant, and the 1099  
23 forms issued to the individual now claimed as a joint venturer.  
24

25 8. **Discovery:** No formal discovery has occurred to date.

26 9. **Class Actions:** This is not a class action.

27 10. **Related Cases:** There are no related cases.  
28

1           11.     **Relief:** As of today's date, a total of \$42,694.69 is claimed due by plaintiffs,  
2     including auditor's and attorney's fees and costs incurred to date.

3           12.     **Settlement and ADR:** The parties have agreed to mediation pursuant to ADR  
4     L.R. 6. The parties have begun pursuing resolution between them at this time in the interest of  
5     resolving the matter.

6           13.     **Consent to Magistrate:** The parties did not consent.

7           14.     **Other References:** Not applicable

8           15.     **Narrowing of Issues:** Defendants dispute that amounts are owed to Plaintiffs,  
9     based on an agreement with the Union that no Trust Fund contributions would be payable on the  
10    individual at issue. Plaintiffs, both Union and Trust Funds, maintain that neither is a party to any  
11    such agreement. Plaintiffs assert that the amounts due were found on audit of defendants' records,  
12    and are owed pursuant to the terms of the Trust Agreements and Collective Bargaining Agreement  
13    as well as the mandates of ERISA.  
14

15           16.     **Expedited Schedule:** The parties are not of the view that this case can be handled  
16    on an expedited basis.

17           17.     **Scheduling:** The parties propose the following schedule, in the event they are  
18    unable to resolve the matter between them or by mediation:  
19

20           Designation of experts:                   June 6, 2008

21           Designation of rebuttal experts:         July 7, 2008

22           Completion of discovery:                 August 8, 2008

23           Dispositive motions:                     September 12, 2008

24           Final Pretrial Conference:               November 10, 2008

25           Trial:                                     January 30, 2009

26           18.     **Trial:** This is expected to be a 2-3 day bench trial.  
27  
28

20. **Other:** There are no other matters that may affect disposition of this action.

Dated: January 17, 2008

\_\_\_\_\_/s/\_\_\_\_\_  
Muriel B. Kaplan  
Attorneys for Plaintiffs

Dated: January 17, 2008

/s/ \_\_\_\_\_  
David A Soldani  
Attorneys for Defendants